IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 104 OF 2006
IN
CRIMINAL APPEAL NO. OF 2005

Firoz A. Moiyadi ..Applicant
V/s
M/s Maruti Diamonds Gold Jwllers
And another ...Respondents.

Mr. H.R. Shetty, Advocate for the applicant.
Mr. B.B. Parekh for repsondent No.1.
Mr.D.P.Adsulte, APP for the State.

CORAM : J.H. BHATIA, J.

DATE : 28TH MARCH, 2007.

P.C.

. Heard Mr.Shetty, learned Counsel for the applicant, who is original complainant and Mr. Parekh, learned Counsel for respondent No.1. This is an application for special leave to prefer an appeal against acquittal, as per Judgment dated 13.6.2005 passed by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai.

2. The case of the applicant is that respondent No.1 had taken a loan from Karnataka Bank and the applicant was a guarantor for repayment of that loan

amount. Therefore, as per the terms of the memorandum of understanding, the respondent No.1 had issued a cheque of amount of Rs.45 Lakh in favour of the present applicant, as a security of the guarantee given by him. That cheque was presented for encashment but was bounced for want of necessary funds. Thereafter the notice was issued but in spite of notice the respondent No.1 failed to make the payment and hence the applicant filed the complaint under section 138 of Negotiable Instruments Act. The learned Magistrate after trial acquitted the accused holding that the cheque was not issued in discharge of any existing liability or debt. Mr. Shetty, the learned Counsel for the applicant concedes that the present applicant had not made any payment to the Bank, as guranteed on behalf of respondent No.1, who had taken the loan from the bank. If the present applicant had not made any payment on behalf of respondent no.1 to the Bank, there was no liability or debt which the respondent No.1 could be required to discharge. As such the disputed cheque was not issued to discharge any existing liability or debt.

3. Hence the application stands rejected and leave is refused.

(J.H. BHATIA, J.)